

(4) That copies of all comments received from the tenants were considered and are being transmitted to HUD together with the certifications; and

(5) A statement that “under the penalties and provisions of title 18 U.S.C., section 1001, the statements contained in this application and its attachments have been examined by me and, to the best of my knowledge and belief, are true, correct, and complete.”

(c) Should the mortgagor receive a delayed decision from the board after filing its preemption request, HUD shall be informed immediately and furnished with a copy of the board’s decision.

#### **§ 246.10 HUD procedures.**

(a) The local HUD office will review the information submitted by the mortgagor together with the decision of the board, if any. The local HUD office will, if it finds that the delay or decision of the board fails to provide adequate residential income to protect the Department’s economic interest in the projects and the board will not modify its position to the satisfaction of the local HUD office, make a report with appropriate recommendations concerning the actions that should be taken by HUD to the Office of Multifamily Housing Management and Occupancy, Headquarters. The report shall be sent to the Office of Multifamily Housing Management and Occupancy, Headquarters, and shall include appropriate recommendations concerning the action that should be taken by HUD.

(b) The Office of Multifamily Housing Management and Occupancy will review the report and will consider whether to preempt the board’s regulation. If it finds that the income level permitted by the board is inadequate to maintain the project as described in § 246.5, it shall issue a formal certification to the board that its authority has been preempted as to such rents. Copies of the certification shall be transmitted to the mortgagor, the local HUD office, and the board.

#### **§ 246.11 Notification of action on preemption request.**

(a) After HUD has considered the preemption request which meets the re-

quirements of § 246.9 and has made its determination to approve or disapprove the request, it will furnish the mortgagor with a written statement of the reasons for approval or disapproval. The mortgagor shall make known to tenants, by posting or delivery in the manner outlined in § 246.7, the reasons for approval or disapproval.

(b) The mortgagor may effect collection of the HUD-approved income level which is set at the time of the preemption determination after the expiration of 30-days notice to the tenants, subject to the terms and rights a tenant may have under the existing lease.

(c) Once the project reaches the income level approved under these procedures, the project will be returned to the control of the local rent control board covering both the rents and the terms of prospective leases.

#### **§ 246.12 Preemption of prospective term of lease.**

(a) In those instances where it will take more than 60 days (2 months) for the project to reach the new income levels, HUD preemption of prospective lease terms shall be effective for those new or renewed leases which by regulation of a local rent control board would require the mortgagor to offer a lease for a term in excess of one year.

(b) As a condition for HUD preemption, the mortgagor must give only one-year leases to tenants whose leases expire during the preemption period.

### **Subpart C—Subsidized Insured Projects**

#### **§ 246.20 Applicability.**

This subpart applies to all projects with mortgages insured or held by HUD that receive a subsidy in the form of:

(a) Interest reduction payments under section 236 of the National Housing Act;

(b) Below-market interest rates under section 221(d)(3) and (5) of the National Housing Act;

(c) Direct loans at below-market interest rates under section 202 of the Housing Act of 1959 (as in effect immediately before October 1, 1991);

(d) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

(e) Housing assistance payments under 24 CFR part 886, subpart A (Section 8 Loan Management Set Aside), for projects that converted their rent supplement contracts under section 101 of the Housing and Urban Development Act of 1965 to such assistance for the term of the HAP contract; or

(f) Housing assistance payments pursuant to a contract under section 8 of the United States Housing Act of 1937 or section 23 of that Act (as in effect immediately before January 1, 1975), except that this subpart will only apply with respect to units occupied by tenants receiving housing assistance thereunder if the contract covers fewer than all units in the project.

[63 FR 64803, Nov. 23, 1998]

**§ 246.21 Rental charges.**

The Department finds that it is necessary and desirable to minimize defaults by the mortgagor in its financial obligations with regard to projects covered by this subpart, and to assist mortgagors to preserve the continued viability of those projects as a housing resource for low-income families. The Department also finds that it is necessary and desirable to protect the substantial economic interest of the Federal Government in those projects. Therefore, the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local rent control boards, (hereinafter referred to as board), or other authority, acting pursuant to state or local law as it affects projects covered by this subpart.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

**§ 246.22 Procedures.**

(a) The mortgagor shall file its application for approval of increases in rental charges with the appropriate local office of HUD.

(b) The local HUD office will process the application for increases in rental charges in accordance with HUD's regulations, including part 245 of this chapter, and instructions and procedures, all adopted pursuant to the statutory authority described in § 246.8, and

shall notify in writing any board in the area in which the project is located that it is processing the application and, that, pursuant to this subpart, HUD has preempted the entire field of rent regulation by a board acting pursuant to state or local law as it affects the project.

(c) The mortgagor may effect collection of the new rents in accordance with the procedures described in part 245, subpart D of this chapter. The mortgagor shall furnish the board a schedule of any new rents approved by HUD within ten (10) days after the approved rents have become effective. Notice to the board of the approved increases in rents does not confer upon the board a right to approve or disapprove the Department's action or to exercise jurisdiction over the implementation of the rent increases by the mortgagor. The sole purpose of the notice is to inform the board of the lawful rents that may be charged for projects covered by this subpart.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

**Subpart D—HUD-Owned Projects**

**§ 246.30 Rental charges.**

The Department has exclusive jurisdiction over the rents of all projects which it owns, irrespective of the existence, or the provisions, of any State or local rent control law or ordinance.

[40 FR 49318, Oct. 22, 1975. Redesignated at 44 FR 58506, Oct. 10, 1979, and at 49 FR 6713, Feb. 23, 1984]

**§ 246.31 Procedures.**

(a) The local HUD office will notify in writing any local rent control board (hereinafter referred to as board) in the area in which the project is located that it is considering increasing the rents for a project within the scope of this subpart, and that the increases are expected to become effective after the expiration of thirty (30) days' notice to the tenants, subject to whatever rights a tenant may have under a lease. The local HUD office will also notify the board that, pursuant to this subpart, the Department has exclusive jurisdiction over the rents for the project.